IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3269 of 1999
With
SPECIAL CIVIL APPLICATION No. 3291 of 1999
With
SPECIAL CIVIL APPLICATION No. 3271 of 1999
With
SPECIAL CIVIL APPLICATION No. 3274 of 1999
With
SPECIAL CIVIL APPLICATION No. 3275 of 1999
With
SPECIAL CIVIL APPLICATION No. 3285 of 1999
To
SPECIAL CIVIL APPLICATION No. 3290 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARESHBHAI BAROT - Petitioner(s)

Versus

VINAYA VYASA I.A.S. & 3 - Respondent(s)

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Appearance :
MR RR VAKIL for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1 - 2, 4,
RULE SERVED for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
Date : 07/12/2005

ORAL JUDGMENT

1. In this group of petitions, the petitioners have challenged an order dated 8th April, 1999 passed by the

Director of Municipalities by which the petitioners were disqualified from their posts of Councillors of Kheralu Nagar Palika. It was further declared that these posts shall fall vacant. It was also provided that the amount paid towards salary, allowances and other expenses to some of the employees employed by the Nagarpalika be recovered from the petitioners and other persons mentioned in the impugned order.

2. Short facts leading to the present petitions are that the petitioners are elected Councillors of Kheralu Nagarpalika. A resolution came to be passed on 13th October, 1997 being Resolution No. 115, by which, it was resolved to appoint one Smt. Kapilaben Daljibhai Desai as Clerk of Kheralu Nagarpalika. It appears that the Director of Municipalities finding that the appointment was dehors the rules and without proper permission and without following necessary requirements, issued a show cause notice to as many as 17 Councillors including the petitioners who were parties to passing of the said resolution. The show cause notice was issued on 13th October, 1998. In the show cause notice, it was indicated that on account of irregularities in the appointment, the Councillors concerned should show cause

why they should not be disqualified under the provisions of Section 37 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as the said Act.)

2.1 The petitioners replied to the show cause notice and resisted the proceedings. It was contended that they have not committed any misconduct and powers u/s 37 cannot be exercised against them. It was further contended that Resolution No. 115 was passed by the President after the general meeting was over for which he was already removed. The petitioners, therefore, cannot be saddled with the liability of having passed the resolution. It was pointed out that they have not participated in passing of the resolution in question. It was also pointed that the agenda for the meeting of 13th October did not contain a proposal which ultimately resulted into passing of Resolution No.115. It was, therefore, submitted that the petitioners were not parties to the irregularities, if any, committed in appointment of said Smt. Kapilaben Desai.

2.2 Director of Municipalities however was not convinced. He passed the impugned order dated 8th April, 1999. It was held that the appointment of Smt. Kapilaben

Desai was irregular. Prior approval of the Government was not obtained. Roaster was not followed. It was observed that all members have connived into giving illegal appointment. In the result following operative order was passed:

> "Being competent in exercise of the powers conferred under the provisions of Section 37 of the Gujarat Municipalities Act, 1983, I declare disqualified all the 17 members of the Kheralu Nagarpalika from their posts and declare their posts vacant pursuant to their passing of Resolution No. 115 dated 13-10-1997 and its implementation thereon and further order that the recovery proceedings pursuant to this resolution be completed within 30 days under the provisions of Section 70 of the Act for recovery of the amount paid towards the salary, allowances and other related expensed to these employees.
>
> This order is signed by me on 8-4-1999 and stamps are affixed. All concerned be informed about this order."

3. The petitioners have challenged the above mentioned order passed by the Director of Municipalities before this Court. While admitting the group of petitions this Court had granted interim stay against the said order. Implementation of the order, therefore, remained suspended during the pendency of the petitions. The term of the Municipality for which the petitioners were elected as Councillors has in the mean time come to an

end. Question of their disqualification has, therefore, lost its significance. Only two aspects of the matter require further consideration. One question that would survive is with respect to disqualification of petitioners in terms of provisions of Section 11(1) of the said Act. Second question will be with respect to the direction of recovery of the amount paid towards salary and allowances to the employees.

4. In so far as the question of recovery of the amount of pay and allowance is concerned, the same is possible by a summary disposal. In the show cause notice issued to the petitioners no reference was made with respect to the perusal by the Director of Municipalities to affect such a recovery from the petitioners. Presently no such order, therefore, could not have been passed without giving any opportunity to the petitioners for being heard on this aspect of the matter. Even otherwise there was no material on record discussed by the Director for passing the said order. The said direction, therefore, cannot be sustained and is quashed and set aside.

5. The other question that remains to be considered is whether the petitioners should suffer disqualification in

terms of Section 11(1) of the said Act.

6. As noted earlier, the Director of Municipalities was pleased to disqualify the petitioners to hold the post of Councillors of the Municipality in exercise of powers u/s 37 of the said Act. Section 11(1) of the said Act reads as follows:

> "11. (1) No person may be a councillor-
> (a) Who-
> (i)has, whether before or after the commencement of this Act, been convicted by a court in India-
> (a) of an offence under [the Untouchability (offences) Act, 1955,] or under the Bombay Prohibition Act, 1949; or
> (b) of any other offence and sentenced to imprisonment for not less than six months,
> unless a period of four years or such lesser period as the State Government may allow in any particular case, has elapsed since his conviction and where he was sentenced to imprisonment, since his release; or
> (ii)has been removed from office under section 37 and four years have not elapsed from the date of such removal, unless he has, by an order which the State Government is hereby empowered to make, if it shall think fit, in this behalf, been relieved from the disqualification arising on account of such removal from office; or
> (b) who is an uncertificated bankrupt or an undischarged insolvent; or
> (c) who is of unsound mind and stands so declared by a competent court; or
>
> (d) who is not a citizen of India or has

> voluntarily acquired the citizenship of a foreign State or is under any acknowledgment of allegiance or adherence to a foreign State; or
> (e) who is a Judge; or
> (f) who is a salaried servant of Government or of a panchayat or municipality".

6.1 It would, therefore, emerge that on account of removal of a Councillor in exercise of powers u/s 37 of the said Act there would be a disqualification arising on account of such removal from office for a period of four years unless the State Government has relieved him from such disqualification.

7. The only ground pressed in service for passing the impugned order u/s 37 of the said Act was that the petitioners were parties to a resolution passed by the municipalities pursuant to which the appointment came to be made which was found to be irregular by the Director. It is doubtful whether entire elected body of Councillors of Municipalities can be dislodged lock stock and barrel for such an irregularity. Secondly the Director also did not taken into account the defence put forth by the petitioners and did not examine whether the petitioners were actually parties to such a resolution or such a resolution was extrapolated after the meeting was over.

The order under challenge has remained stayed for more than seven years. In the mean time the term of the elected body of the municipality has come to an end. The period of disqualification envisaged u/s 11(1) of the said Act is also over. In facts of the present case, it would not be appropriate to allow the disqualification to be attached on the petitioners as envisaged u/s 11(1) of the said Act for a period of four years from now on. In the facts of the present case, considering the issues involved, the interim stay granted by this Court and also passage of time, it is provided that though the question of removal of the petitioners ordered by the Director of Municipalities in exercise of powers u/s 37 of the said Act is not being examined since this issue has become academic, it is clarified that there would be no further disqualification of the petitioners in terms of provisions of Section 11(1) of the said Act. With these directions and observations, petitions are disposed of. Rule is made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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